A

AMBER COURT MANAGEMENT CORPORATION & ORS v. HONG GAN GUI & ANOR

COURT OF APPEAL, PUTRAJAYA
VARGHESE GEORGE JCA
IDRUS HARUN JCA
B BADARIAH SAHAMID JCA
[CIVIL APPEALS NO: W-02 (IM) (NCVC) 1840-10-2014
& W-02 (IM) (NCVC) 1810-10-2014]
27 NOVEMBER 2015

C ***CIVIL PROCEDURE:*** *Action – Capacity to sue – Defamation – Action by management corporation and its council members – Locus standi – Whether management corporation could maintain action for defamation – Whether council members could bring action on behalf of management council – Whether claim maintainable under Strata Titles Act 1985 and common law – Whether claim*
D *ought to be struck out – Strata Titles Act 1985, ss. 39(3), 43(1)*

The plaintiffs ('appellants') filed an action in a defamation suit ('suit') against the defendants ('respondents') in respect of alleged defamatory statements about the plaintiffs, posted in a Facebook account belonging to the defendants. The first plaintiff was the management corporation of Amber
E Court Condominium whilst the second to the sixth plaintiffs were council members of the first plaintiff. The Judicial Commissioner ('JC') allowed the defendants' application *vide* encl. 9 to strike out the plaintiffs' writ and statement of claim on the ground that the plaintiffs had no *locus* to institute the suit. The JC also dismissed the plaintiffs' application *vide* encl. 14 to
F amend their writ and statement of claim. The amendment was in respect of the intitulement to state that the action was being brought by the second to sixth plaintiffs in their personal capacity as well as their capacity as council members of the first plaintiff. Hence, the plaintiffs filed two appeals against the decision of the JC. On appeal, the plaintiffs contended, *inter alia*, that the
G JC had (i) erred in interpreting the Strata Titles Act 1985 ('the Act') in respect of the powers and competence of the first plaintiff to institute actions in defamation in particular, ss. 39 and 43 of the Act; and (ii) failed to consider that the second to the sixth plaintiffs had the capacity to bring an action in defamation in their individual capacities. The crux of the plaintiffs'
H submission was that s. 39(3) of the Act should be read in a liberal rather than a restrictive way to give the plaintiffs *locus* to sue and be sued on all matters, including defamation. In addition, the plaintiffs placed emphasis on the word 'include' found in s. 43(1) of the Act to submit that the duties stated in the Act were not meant to be exhaustive but could be extended to other incidental powers and duties as well. The issues that arose for determination
I were (i) whether the first plaintiff had the *locus* to institute an action in defamation under the Act; and (ii) whether the second to the sixth plaintiffs had the *locus* to institute an action in defamation under the Act or by recourse to common law.

Held (dismissing both appeals with costs)
Per Badariah Sahamid JCA delivering the judgment of the court:

(1) The Act conceives the management corporation and the council as two separate entities. While the management corporation comprised all parcel proprietors, the members of the council comprised only those parcel proprietors who have been elected by the management corporation to perform the duties and conduct the business of the management corporation. The intention of the Legislature in creating the management corporation was for the purposes of the proper management and maintenance of the common property of parcel proprietors. Therefore, it was not tenable that the general provisions of ss. 39(3) and 43(2)(f) of the Act should extend such powers indeterminately to the extent that it would include the power to bring an action in defamation. Thus, in the absence of express provisions or by necessary implication from express provisions, the first plaintiff had no *locus* to bring an action in defamation against the defendants. (paras 24, 29, 30 & 39)

(2) In respect of the *locus* of the second to the sixth plaintiffs, the Act does not empower the council members of the management corporation with the legal capacity to institute actions in their own individual names or as council members of the management corporation. Since the council only acts on behalf of the management corporation and its powers are restricted to any of the powers of the management corporation, the second to the sixth plaintiffs had no *locus* to sue in defamation. If the second and third plaintiffs were complaining that they had been defamed personally, then they ought to have rightfully brought separate proceedings in their individual capacities and not have it rolled up as being defamatory of the management corporation and all of the plaintiffs. (paras 40, 41 & 43)

(3) At common law, the position is that a trading corporation and non-trading corporation could sue for defamation on proof that the defamatory statements affect its business, revenue, income or goodwill. The plaintiffs in the instant case were not empowered to transact business or to acquire and deal with property to acquire revenue or income. Its powers were primarily for the maintenance and enjoyment of common property by parcel proprietors. Thus, the plaintiffs had not met the criteria to enable them to maintain an action in defamation. (paras 48, 52 & 53)

Bahasa Malaysia *Headnotes*

Plaintif-plaintif ('perayu-perayu') memfailkan tindakan fitnah ('guaman') terhadap defendan-defendan ('responden-responden') berkenaan kenyataan berbaur fitnah mengenai plaintif-plaintif yang dipamerkan dalam akaun Facebook milik defendan-defendan. Plaintif pertama ialah perbadanan

pengurusan Kondominium Amber Court manakala plaintif kedua hingga keenam ialah ahli majlis plaintif pertama. Pesuruhjaya Kehakiman ('PK') membenarkan permohonan defendan-defendan melalui lampiran 9 untuk membatalkan writ dan penyataan tuntutan plaintif-plaintif atas alasan plantif-plaintif tidak mempunyai *locus* untuk memulakan guaman itu. PK juga menolak permohonan plaintif-plaintif melalui lampiran 14 untuk meminda writ dan penyataan tuntutan. Pindaan ini berkaitan dengan intitulmen untuk menyatakan bahawa tindakan dibawa oleh plaintif kedua hingga keenam dalam kapasiti peribadi mereka serta kapasiti mereka sebagai ahli majlis plaintif pertama. Lantaran itu, plaintif-plaintif memfailkan dua rayuan terhadap keputusan PK. Dalam rayuan, plaintif-plaintif menghujahkan, antara lain, bahawa PK telah (i) terkhilaf dalam mentafsir Akta Hak Milik Strata 1985 ('Akta') berkenaan dengan kuasa dan kecekapan plaintif pertama untuk memulakan tindakan fitnah khususnya, ss. 39 dan 43 Akta; dan (ii) gagal mempertimbangkan bahawa plaintif kedua hingga keenam mempunyai kapasiti untuk memulakan tindakan dalam kapasiti individu mereka. Asas hujahan plaintif-plaintif adalah bahawa s. 39(3) Akta harus dibaca secara liberal berbanding dengan cara terhad bagi memberi plaintif-plaintif *locus* untuk menyaman dan disaman dalam semua perkara termasuk fitnah. Di samping itu, plaintif-plaintif memberi penekanan pada perkataan 'include' yang termaktub dalam s. 43(1) Akta yang menyatakan bahawa kewajipan dalam Akta tidak diniatkan sebagai muktamad atau terhad kepada itu sahaja tetapi boleh dilanjutkan kepada kuasa dan kewajipan lain. Isu-isu yang berbangkit untuk penentuan adalah (i) sama ada plaintif pertama mempunyai *locus* untuk memulakan tindakan fitnah di bawah Akta; dan (ii) sama ada plaintif kedua hingga keenam mempunyai *locus* untuk memulakan tindakan fitnah di bawah Akta atau dengan menggunakan common law.

Diputuskan (menolak kedua-dua rayuan dengan kos)
Oleh Badariah Sahamid HMR menyampaikan penghakiman mahkamah:

(1) Akta menganggap perbadanan pengurusan dan majlis sebagai dua entiti berasingan. Walaupun perbadanan pengurusan terdiri daripada kesemua pemilik bahagian, ahli-ahli majlis hanya terdiri daripada pemilik bahagian yang dilantik oleh perbadanan pengurusan untuk melaksanakan kewajipan dan menjalankan urusan perbadanan pengurusan. Tujuan Badan Perundangan mewujudkan perbadanan pengurusan adalah untuk pengurusan dan penyelenggaraan harta bersama pemilik bahagian. Oleh itu, tidak boleh dipertahankan bahawa peruntukan am ss. 39(3) dan 43(2)(f) Akta harus melanjutkan kuasa berikut secara berterusan ke tahap di mana ia meliputi kuasa membawa tindakan fitnah. Maka, tanpa peruntukan nyata atau implikasi tertentu daripada peruntukan nyata, plaintif pertama tidak mempunyai *locus* untuk membawa tindakan fitnah terhadap defendan-defendan.

(2) Berkenaan *locus* plaintif kedua dan keenam, Akta tidak memberi kuasa kepada ahli majlis perbadanan pengurusan dengan kapasiti perundangan untuk memulakan tindakan atas nama individu sendiri atau sebagai ahli majlis perbadanan pengurusan. Memandangkan majlis hanya bertindak bagi pihak perbadanan pengurusan dan kuasanya terhad kepada mana-mana kuasa pengurusan perbadanan, plaintif kedua hingga keenam tidak mempunyai *locus* untuk saman fitnah. Jika plaintif kedua dan ketiga mengadu bahawa mereka difitnah secara peribadi maka mereka sepatutnya berhak membawa prosiding berasingan dalam kapasiti individu mereka dan tidak diambil kira sebagai fitnah terhadap perbadanan pengurusan dan kesemua plaintif.

(3) Di bawah common law, satu perbadanan perdagangan dan perbadanan bukan perdagangan boleh saman fitnah apabila terbukti bahawa kenyataan fitnah menjejaskan perniagaan, pendapatan, hasil atau nama baik. Plaintif-plaintif dalam kes ini tidak mempunyai kuasa untuk menjalankan urusan perniagaan atau memperoleh dan menguruskan harta untuk memperoleh pendapatan dan hasil. Kuasa-kuasa utamanya adalah bagi penyelenggaraan dan kenikmatan harta bersama oleh pemilik bahagian. Oleh itu, plaintif-plaintif tidak memenuhi kriteria bagi membolehkan mereka mengambil tindakan fitnah.

Case(s) referred to:

Badan Pengurusan Tiara Duta v. Timeout Resources Sdn Bhd [2014] 8 CLJ 133 CA ***(refd)***

Chinese Empire Reform Association v. Chinese Daily Newspaper Publishing Co Ltd [1907] 13 BCR 141 ***(dist)***

Jameel v. Wall Street Journal Europe SPRL (No. 3) [2007] 1 AC 359 ***(refd)***

Knuppfer v. London Express Newspaper Ltd [1944] AC 116 ***(refd)***

Lewis v. Daily Telegraph Ltd [1964] AC 235 ***(refd)***

RSP Architects Planners & Engineers v. Ocean Front Pte Ltd and Another Appeal [1996] 1 SLR 113 ***(refd)***

South Hetton Coal Co v. North Eastern News Association Ltd [1894] 1 QB 133 ***(refd)***

Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd [2002] 3 CLJ 624 CA ***(refd)***

Legislation referred to:

Building and Common Property (Maintenance and Management) Act 2007, s. 8(2)(d)

Rules of Court 2012, O. 18 r. 19(1)(a), (b), (c), (d)

Strata Titles Act 1985, ss. 39(1), (3), (4), 43(1), (a), (2)(f), 47, 53, 76, 77

Land Titles (Strata) Act 1988 (Cap 158) [Sing], ss. 32(2)(b), (c), 116

For the appellants - Avinder Singh Gill Ranjit Singh; M/s AS Gill & Salina

For the respondents - David Samuel (Leonard Parthiban Lourdesamy with him); M/s Chambers of Firdaus

[Editor's note: For the High Court judgment, please see Amber Court Management Corporation & Ors v. Hong Gan Gui & Anor [2014] 1 LNS 1384 (affirmed).]

Reported by Sandra Gabriel

A

JUDGMENT

Badariah Sahamid JCA:

Brief Background

[1] There are two appeals before us. Appeal 1840-10-2014 is the B plaintiffs' appeal against the decision of the learned Judicial Commissioner (JC) allowing the defendants' application in encl. 9 to strike out the plaintiffs' writ and statement of claim dated 29 April 2014, pursuant to O. 18 r. 19(1)(a) or (b) or (c) or (d) of the Rules of Court 2012. Appeal 1810-10-2014 is the plaintiffs' appeal against the decision of the same learned JC dismissing the C plaintiffs' application in encl. 14 to amend their writ and statement of claim. The amendment was in respect of the intitulement to state that the action was being brought by the second to the sixth plaintiffs in their personal capacity as well as their capacity as Council Members of Amber Court Management Corporation 2013-2014.

D **[2]** The plaintiffs had filed an action in defamation against the defendants in respect of alleged defamatory statements about the plaintiffs posted in a Facebook account belonging to the defendants.

[3] The first plaintiff is the Management Corporation of Amber Court Condominium. The second to the sixth plaintiffs were council members of E the first plaintiff at the time of the publication of the alleged defamatory statements.

[4] The primary issue before the High Court was whether the plaintiffs have *locus* to commence an action in defamation.

F **[5]** The learned JC determined that the plaintiffs had no *locus* to institute the suit on the grounds succinctly summarised as follows:

> A management corporation as a creature of statute, cannot of its own volition extend its jurisdiction to matters falling outside its own competence. Its powers and duties are defined and limited by the Act. A G claim in defamation cannot be brought by the management corporation as it is neither a trading nor a non-trading corporation.

Appellants' Grounds of Appeal

[6] In the appellants' Memorandum of Appeal, the following main H grounds were raised:

[7] The learned JC had erred in law in her interpretation of the Strata Titles Act 1985 (Act 318) ('the Act') in respect of the powers and competence of the first plaintiff ('management corporation') to institute actions in defamation in particular, ss. 39, 43 and 47of the Act.

I **[8]** The learned JC had misdirected herself in her reference to the case of *Chinese Empire Reform Association v. Chinese Daily Newspaper Publishing Co Ltd* [1907] 13 BCR 141, in relation to the distinction between trading and non-trading corporations.

[9] The learned JC failed to appreciate that the Act does not require the management corporation to obtain a resolution before instituting or defending suits.

[10] The learned JC had failed to consider that the second to the sixth plaintiffs who were council members of the management corporation had the capacity to bring an action in defamation in their individual capacities.

Appellants' Submissions

[11] The crux of the appellants' submissions before us is that the Act should be read in a liberal rather than a restrictive way to give the plaintiffs *locus* to sue and be sued on all matters, including defamation.

[12] In support of the above contention, the appellants refers to s. 39(3) of the Act which states a general provision that, "The management corporation may sue and be sued".

[13] In addition the appellants sought to place emphasis on the word include found in s. 43(a) of the Act to submit that the duties stated in that provision were not meant to be exhaustive but could be extended to other incidental powers and duties as well.

[14] In support of the above contention, reference was made to the case of *Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd* [2002] 3 CLJ 624; [2002] 2 MLJ 707 at p. 632 (CLJ); p. 714 (MLJ) where Gopal Sri Ram JCA (as he then was) observed that:

> On settled principles of statutory interpretation, it is clear that when an Act of Parliament employs the expression, 'includes' to define some other word or expression, the intention is to leave the meaning of the expression defined open-ended. By contrast, when the word 'means' is employed to define something, there is a rebuttable presumption of statutory interpretation that Parliament intends to restrict the meaning of the expression defined.

[15] Reference was also made to the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) which provides under the heading, 'Duties and powers of Joint Management Body', the following:

> Section 8(2): The powers of the Body shall include the following:
>
> (g) to do all things reasonably necessary for the performance of its duties under this Act.

[16] The appellants cite as authority for a liberal as opposed to a restrictive interpretation of the competence of the management corporation, the case of *Badan Pengurusan Tiara Duta v. Timeout Resources Sdn Bhd* [2014] 8 CLJ 133; [2015] 1 MLJ 110. In that case the main issue that arose for determination was whether a condominium complex's joint management body ('JMB'), established under the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) had power under the Act to lease out the common property to a third party.

[17] The Court of Appeal held as follows:

> The absence of any specific provision spelling out expressly the power to sell, lease or rent out common property in s. 8(2) of the Act did not necessarily mean a JMB did not have the power to do so. The power need not be express and it could be implied that the leasing out of common property by a JMB can come within the ambit of s 8(2) g of the Act ... As there was a general provision in s. 8(2)g ('to do all things reasonably necessary for the performance of its duties under the Act') the court saw no reason or basis to declare the agreement to lease in the present case to be null and void for being *ultra vires* the Act.

Thus, the appellants contend that the plaintiffs have the *locus* to commence an action in defamation against the defendants.

[18] It was further contended that the second to the sixth plaintiffs as council members of the management corporation have *locus* to institute this action against the defendants. In support reference was made to the case of *Knuppfer v. London Express Newspaper Ltd* [1944] AC 116 as authority for the proposition that if defamatory statements are made of a class or group, every member of it has a cause of action.

Issues

[19] The issues before us may be summarised as follows:

1. Whether the first appellant/plaintiff, Amber Court Management Corporation ('the management corporation') has *locus* to institute an action in defamation under the Strata Title Act 1985 (Act 318)?
2. Whether the second to the sixth appellants/plaintiffs who were at the material time council members of the management corporation have the *locus* to institute an action in defamation under Act 318 or by recourse to common law?

Decision

[20] After careful consideration of learned counsels' oral and written submissions, the record of appeal as well as relevant authorities, we find no merits in this appeal. We therefore dismiss both appeals with costs. The decision of the High Court to strike out the plaintiffs' suit in appeal 1840-10-2014 is affirmed. We also affirm the decision of the learned JC to dismiss the plaintiffs' application for amendment of their writ and statement of claim in appeal 1810-10-2014. The grounds of our decision are set out below.

Strata Titles Act 1985 (Act 318)

Duties And Powers Of The Management Corporation

[21] In order to determine whether the first plaintiff, Amber Court Management Corporation ('the management corporation') and the second to the sixth plaintiffs who are council members of the first plaintiff, have *locus*

to institute an action in defamation, it is necessary, firstly to examine the nature of the management corporation and the council, and its powers and competence conferred by the Act.

[22] According to s. 39(1), a management corporation consists of "all the parcel proprietors including in the case of phased development, the proprietor of the provisional block or blocks."

[23] By s. 39(4)

> The management corporation shall elect a council which, subject to any restriction imposed or direction given by the management corporation at a general meeting, shall perform the management corporation's duties and conduct the management corporation's business on its behalf, and may for that purpose exercise any of the management corporation's powers.

[24] The Act therefore conceives of the management corporation and the council as two separate entities. While the management corporation is comprised of all parcel proprietors, the members of the council comprise only those parcel proprietors who have been elected by the management corporation to perform the duties and conduct the business of the management corporation.

[25] What are the powers and competence of the management corporation? By virtue of s. 39(3), the management corporation may sue and be sued.

[26] Section 43(1) of the Act further lists the specific duties and powers of management corporations. These relate principally to the proper management and maintenance of the common property.

[27] Section 43(2) confers on the management corporation specific powers in respect of the common property. Paragraph (f) confers the power "to do all things necessary for the performance of its duties under this Part ... "

[28] Further, there are express provisions in the Act which stipulate the nature of the legal proceedings which management corporations are empowered to institute. These are as follows:

(a) By virtue of s. 53, in respect of legal proceedings to recover sums due from a proprietor;

(b) By virtue of s. 76, as representatives of proprietors in respect of legal proceedings which relate to common property; and

(c) By virtue of s. 77, proceedings taken as agents for proprietors in cases of defects to parcels in the common property.

[29] It is quite clear from a careful reading of the Act that the intention of the Legislature in creating the management corporation is for the purposes of the proper management and maintenance of the common property of parcel proprietors, which includes the power to institute legal proceedings in respect thereof, as expressly stated in ss. 53, 76 and 77 of the Act.

[30] In the face of the clear, express provisions stipulating the powers and competence of the management corporation, it is not tenable that the general provisions of s. 39(3) and s. 43(2)(f) of the Act should extend such powers indeterminately to the extent that it would include the power to bring an action in defamation.

[31] We find support for the above proposition in the Singapore case of *RSP Architects Planners & Engineers v. Ocean Front Pte Ltd and Another Appeal* [1996] 1 SLR 113. The primary issue before the Singapore Court of Appeal was whether it is competent for the management corporation of the Bayshore Park Condominium to sue in its own name for the alleged defects in the construction of the common property.

[32] The court analysed the relevant provisions of the Singapore Land Titles (Strata) Act 1988 which has provisions similar to the Malaysian Strata Titles Act 1985 (Act 318) in respect of the powers of the management corporation. The court took the approach that the powers and competence of the management corporation is to be construed by reference to the express and specific provisions of the Act, not by implication from general provisions.

[33] In the *RSP Architects Planners* case *(supra)* the court found that the management corporation could institute the action under s. 32(2) (b) or (c) or s. 116 of the Strata Act.

[34] Section 32(2) of the Strata Act provides as follows:

The management corporation may:

(a) sue and be sued on any contract made by it;

(b) sue and be sued in respect of any matter affecting common property;

(c) sue in respect of any loss or damage suffered by a management corporation arising out of a contract or otherwise; and

(d) be sued in respect of any matter connected with the parcel for which the subsidiary proprietors are jointly liable.

[35] LP Thean JA had observed, at p. 120:

> The claim of the management corporation is against the developers for damages representing the costs and expenses incurred or which would be incurred in rectifying the defects to the common property occasioned by the alleged negligence of the developers. It is empowered by s. 33(2) of the Strata Titles Act to bring and maintain this action and the claims falls within para (b) as well as para (c) of s. 33(2). In our judgment, the management corporation is competent to bring the action under s 33(2) of the Strata Act.
>
> Alternatively, the management corporation is entitled to bring the action on behalf of the subsidiary proprietors under s. 116 of the Strata Act.

[36] A similar interpretation was adopted by this court in the case of *Badan Pengurusan Tiara Duta v. Timeout Resources Sdn Bhd* [2014] 8 CLJ 133; [2015] 1 MLJ 110. In that case the main issue that arose for determination was whether a condominium complex's joint management body ('JMB'), incorporated under the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) had power under the Act to lease out the common property to a third party.

[37] In that case the Court of Appeal made a finding that such power to lease arises by necessary implication from the express provisions of s. 8(2)(d) of the Act.

Mah Weng Kwai JCA had observed:

> If, as is provided in s. 8(2)(d), a JMB can purchase, hire or acquire property, the court sees no reason why a JMB cannot do the converse provided of course, the sole objective is for the benefit of residents and members of JMB.

[38] Thus, in principle the construction of the legal capacity of a Joint Management Body (JMB) under the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) in the case of *Badan Pengurusan Tiara Duta (supra)* was no different from the approach of the Singapore court in the case of *RSP Architects Planners* case *(supra)*. The powers and competence of an entity like the management corporation has to be determined by reference to express provisions of the enabling statute.

[39] Thus in the absence of express provisions or by necessary implication from express provisions, the first plaintiff/management corporation has no *locus* to bring an action in defamation against the defendants.

[40] In respect of appeal 1810-10-2014, the second to sixth plaintiffs' proposed amendment to the intitulement to the action was to state that they are "suing in their personal capacity and as Council Members of Amber Court Management Corporation". In respect of the *locus* of the second to the sixth plaintiffs, a careful consideration of the Act demonstrates that the Act does not empower the council members of the management corporation with the legal capacity to institute actions in their own individual names or as council members of the management corporation.

[41] Since the council only acts on behalf of the management corporation and its powers are restricted to any of the powers of the management corporation, the second to sixth plaintiffs have no *locus* to sue in defamation.

[42] In any event if one were to examine the statement of claim at para. 29 (the so termed 'first attack') and para. 31 (the so termed 'second attack') that set out the purported defamatory material, it will be noticed that none of the second to sixth plaintiffs are specifically mentioned or identified by the defendants in the impugned Facebook or Email material; all references were to the management corporation as a whole or its proceedings.

[43] At para. 33 of the statement of claim (the so termed 'third attack') only the names of the second and third plaintiffs are found in the alleged Facebook material. At para. 34 however it is averred that "… the plaintiffs contend and will contend that the statement was issued with the intent to defame the plaintiffs ..." meaning all the plaintiffs collectively as 'Ahli Jawatankuasa Amber Court Management Corporation Management Committee'.

In our view if the second and third plaintiffs were complaining that they had been defamed personally, then they ought to have rightfully brought separate proceedings in their individual capacities (apart from others) and not have it rolled up as being defamatory of the management corporation and all of the plaintiffs.

Common Law

[44] The next issue to consider is whether, in the absence of competency to institute an action in defamation under the Act, the plaintiffs can have any similar recourse under common law?

[45] The first plaintiff is not a natural person but a creature of statute. Thus, their powers and competencies must necessarily be conferred by the enabling statute. In any event, the appellants have not been able to furnish us with any authorities to support the contention that the plaintiffs have the *locus* to maintain an action in defamation at common law.

[46] Historically at common law, the tort of defamation had developed to protect the individual's dignity and social esteem. When the claimant is a legal (ie, artificial) as opposed to a human entity, different principles apply.

[47] As Lord Reid observed in the case of *Lewis v. Daily Telegraph Ltd* [1964] AC 234 at 262:

> A company cannot be injured in its feelings; it can only be injured in its pocket. Its reputation can be injured by a libel but that injury must sound in money. The injury need not necessarily be confined to loss of income. Its goodwill may be injured.

Trading And Non Trading Corporations

[48] At common law, the position is that a trading corporation and non-trading corporation can sue for defamation on proof that the defamatory statements affect its business, revenue or income or goodwill.

[49] In the classic case of *South Hetton Coal Co v. North Eastern News Association Ltd* [1894] 1 QB 133, the Court of Appeal held that a company was entitled to sue a newspaper which had alleged that properties in which the company had housed its employees were highly insanitary. It was held that the company could maintain the action in libel as there was injury to the company's trading reputation.

[50] Recently, the House of Lords approved the position in *South Hetton*'s case (*supra*) in the case of *Jameel v. Wall Street Journal Europe SPRL (No. 3)* [2007] 1 AC 359. In this case, a trading company, incorporated in Saudi

Arabia, had brought an action for libel in response to a newspaper article which suggested that its bank accounts were being monitored for channelling funds to terrorist organisations. The company was found to have a trading reputation in UK and thus could maintain an action in libel.

[51] In the case of *Chinese Empire Reform Association v. Chinese Daily Newspaper Publishing Co Ltd* [1907] 13 BCR 141, the court held that non-trading and trading corporations can maintain actions in defamation provided that there was injury to its property or business. In this case the plaintiff, a non-trading corporation was incorporated under the Benevolent Societies Act with express powers to transact business, acquire and purchase property as well as sell, exchange, mortgage let or otherwise dispose of property, real and personal.

Morrison J observed:

> a non-trading corporation has the right to acquire property which may be the source of income or revenue. And the transaction of the business incidental thereto creates a reputation, rights and interests, in no essential respects different from that of an individual or trading corporation.

[52] The *Chinese Empire* case *(supra)* may be distinguished from the instant case on its particular facts. In contrast, the plaintiffs in the instant case are not empowered to transact business or to acquire and deal with property to acquire revenue or income. Its powers are primarily for the maintenance and enjoyment of common property by parcel proprietors.

[53] Thus in common law, the plaintiffs have not met the criteria to enable them to maintain an action in defamation.

Conclusion

[54] It is clear from the established authorities that the first plaintiff, as well as the second to sixth plaintiffs being creatures of statute can only exercise powers and competence expressly provided in the enabling statute or by necessary implication arising from express provisions in the Act itself. To extend these powers and competence by reference to general provisions in the Act, to confer *locus* to bring an action in defamation, is to our mind to go further than what was intended by the Act and is unsupported by authorities.

[55] Neither can there be recourse to the common law for the reasons discussed above.

[56] We therefore dismiss both appeals with costs, and affirm the decision of the learned JC to strike out the plaintiffs' writ and statement of claim dated 29 April 2014, pursuant to O. 18 r. 19(1)(a) or (b) or (c) or (d) of the Rules of Court 2012, as well as the plaintiffs' application for amendment of the same.